

Remarks

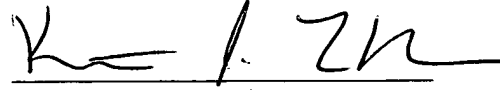
Claims 7-10, 12, and 13 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,760,950 (Maly et al.) "Maly". This rejection is respectfully traversed. Maly's scanning confocal microscope does not provide the Claim 7 step of "treating tissue with the aid of an illumination beam". It is the Examiner's position on page 2 of the Office Action dated November 2, 2005, that Maly "disclose[s] (as seen for example in column 13) that the treatment can involve laser surgery". However, none of Maly's optics shown in FIGS. 2A or 2B are described anywhere in Maly as providing treatment to tissue. Mere statement that Maly's microscope can observe "the effects of laser refractive surgery" at lines 12-13 of column 13, does not express or imply that Maly's microscope can perform laser refractive surgery, as the Examiner appears to contend.

In the Advisory Action dated April 21, 2006, the Examiner states that "Claim 7 sets forth that either the same illumination beam used for treatment or a different beam is used for diagnostic purposes." The issue is whether Maly enables the disclosure of the claimed subject matter to be anticipatory (see MPEP 2121.01). Such clearly is not the case here in regards to Maly where its optical system 120 (FIG. 2A) is not described, or even suggested, as having means for enabling treatment of tissue. In order to clarify Claim 7, rather than to overcome this rejection, Claim 7 is amended to describe that the imaging step utilizes at least one component of the optics of the treating step. This is not new matter as evident from the single or two laser imaging and treating systems of FIGS. 1, 2, or 3. Clearly, Maly does not disclose such optics, and mere statement that Maly's microscope can observe "the effects of laser refractive surgery" at lines 12-13 of column 13, is not even suggestive of such optics. Accordingly, Maly cannot anticipate Claim 7, and withdrawal of the anticipation rejection of Claim 7 and of its dependent claims is requested.

In regards to new Claim 14, it cannot be said that Maly discloses both imaging and treating using at least the same objective lens, where Maly optical system 120 (FIG. 2A) although providing imaging through objective lens 290 does not describe treatment through its objective lens 290, such as the Examiner contended laser refractive surgery.

In order for entry of this Amendment, a Request for Continued Examination is being filed with this Amendment and includes a request for an additional third-month extension of time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. J. LuKacher', written over a horizontal line.

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